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HOUSE BILL 898

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben Lujan

AN ACT

**RELATING TO THE INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND;
AMENDING THE SEVERANCE TAX BONDING ACT TO INCLUDE FUNDS THAT
INVEST IN CERTAIN MINORITY-OWNED BUSINESSES WITHIN THE
DEFINITION OF "NEW MEXICO PRIVATE EQUITY FUND".**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 7-27-5.15 NMSA 1978 (being Laws 1990,
Chapter 126, Section 5, as amended by Laws 2001, Chapter 238,
Section 1 and by Laws 2001, Chapter 252, Section 10) is amended
to read:**

**"7-27-5.15. NEW MEXICO PRIVATE EQUITY [~~FUND~~] FUNDS AND
SMALL BUSINESS INVESTMENTS. --**

**A. No more than three percent of the market value
of the severance tax permanent fund may be invested in New
Mexico private equity funds under this section.**

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1 B. If an investment is made under Subsection A of
2 this section, not more than fifteen million dollars
3 (\$15,000,000) of the amount authorized for investment pursuant
4 to Subsection A of this section shall be invested in any one
5 New Mexico private equity fund. Except as provided in
6 Subsection F of this section, the amount invested in any one
7 New Mexico private equity fund shall not exceed fifty percent
8 of the committed capital of that fund.

9 C. In making investments pursuant to Subsection A
10 of this section, the council shall give consideration to
11 investments in New Mexico private equity funds:

12 (1) whose investments enhance the economic
13 development objectives of the state; and

14 (2) that invest in minority-owned small
15 businesses.

16 D. The state investment officer shall make
17 investments pursuant to Subsection A of this section only upon
18 approval of the council and upon review of the recommendation
19 of the private equity investment advisory committee. The state
20 investment officer is authorized to make investments pursuant
21 to Subsection A of this section contingent upon a New Mexico
22 private equity fund securing paid-in investments from other
23 accredited investors for the balance of the minimum committed
24 capital of the fund.

25 E. As used in this section:

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1 (1) "committed capital" means the sum of the
2 fixed amounts of money that accredited investors have obligated
3 for investment in a New Mexico private equity fund and which
4 fixed amounts may be invested in that fund on one or more
5 payments over time; ~~and~~

6 (2) "New Mexico private equity fund" means
7 ~~any~~:

8 (a) a limited partnership, limited
9 liability company or corporation organized and operating in the
10 United States and maintaining an office staffed by a full-time
11 investment officer in New Mexico that: ~~(a)~~ 1 has as its
12 primary business activity the investment of funds in return for
13 equity in or debt of businesses for the purpose of providing
14 capital for start-up, expansion, product or market development,
15 recapitalization or similar business purposes; ~~(b)~~ 2 holds
16 out the prospects for capital appreciation from such
17 investments; ~~(c)~~ 3 has a minimum committed capital of
18 fifteen million dollars (\$15,000,000); ~~(d)~~ 4 has at least
19 one full-time manager with at least three years of professional
20 experience in assessing the growth prospects of businesses or
21 evaluating business plans and who has established permanent
22 residency in the state; ~~(e)~~ 5 is committed to investing or
23 helps secure investing by others in an amount at least equal to
24 the total investment made by the state investment officer in
25 that fund pursuant to this section, in businesses with a

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1 principal place of business in the state and that hold promise
2 for attracting additional capital from individual or
3 institutional investors nationwide for businesses in the state;
4 and ~~[(f)]~~ 6) accepts investments only from accredited investors
5 as that term is defined in Section 2 of the federal Securities
6 Act of 1933, as amended, (15 U.S.C. Section 77(b)) and rules
7 and regulations promulgated pursuant to that section; or
8 (b) a limited partnership, limited
9 liability company or corporation organized and operating in the
10 United States and maintaining an office in New Mexico that: 1)
11 has as its primary business activity the investment of funds in
12 return for equity in minority-owned small businesses in New
13 Mexico for the purpose of providing capital for start-up,
14 expansion, product or market development or similar business
15 purposes; 2) holds out the prospects for capital appreciation
16 from such investments; 3) has a minimum committed capital of
17 three million dollars (\$3,000,000); 4) has a manager with at
18 least three years of professional experience in assessing the
19 growth prospects of businesses or evaluating business plans and
20 who has established permanent residency in the state; 5) is
21 committed to investing or helps secure investing by others in
22 businesses with a principal place of business in the state and
23 that hold promise for attracting additional capital from
24 individual or institutional investors nationwide for businesses
25 in the state; and 6) accepts investments only from accredited

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1 investors as that term is defined in Section 2 of the federal
2 Securities Act of 1933, as amended, (15 U.S.C. Section 77(b))
3 and rules and regulations promulgated pursuant to that section;
4 and

5 (3) "minority-owned small business" means a
6 business:

7 (a) not less than fifty percent of the
8 ownership interest of which is held by individuals who are
9 women or of Hispanic, Native American, African-American or
10 Asian heritage;

11 (b) that is not a subsidiary or division
12 of another business; and

13 (c) that has an average annual gross
14 revenue for the preceding three fiscal years that does not
15 exceed one million five hundred thousand dollars (\$1,500,000).

16 F. The amount invested in any one New Mexico
17 private equity fund, as defined in Subparagraph (b) of
18 Paragraph (2) of Subsection E of this section, shall not exceed
19 seventy-five percent of the committed capital of that fund.

20 ~~[F.]~~ G. The state investment officer shall make a
21 commitment to the small business investment corporation
22 pursuant to the Small Business Investment Act to invest one-
23 fourth of one percent of the market value of the severance tax
24 permanent fund by July 1, 2001 to create new job opportunities
25 by providing land, buildings or infrastructure for facilities

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1 to support new or expanding businesses. If invested capital in
2 the small business investment corporation should at any time
3 fall below one-fourth of one percent of the market value of the
4 severance tax permanent fund, further commitments shall be made
5 until the invested capital is equal to one-fourth of one
6 percent of the market value of the fund. As used in this
7 subsection, "invested capital" means the original capital
8 contributed less any return of cost by the private equity
9 funds.

10 H. The state investment officer shall report
11 semiannually on the New Mexico private equity investments made
12 pursuant to this section. Annually, a report shall be
13 submitted to the legislature prior to the beginning of each
14 regular legislative session and a second report no later than
15 October 1 each year to the legislative finance committee, the
16 revenue stabilization and tax policy committee and any other
17 appropriate interim committee. Each report shall provide the
18 amounts invested in each New Mexico private equity fund, as
19 well as information about the objectives of the funds, the
20 companies in which each fund is invested and how each
21 investment enhances the economic development objectives of the
22 state."